

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

AMENDED COMPLAINT NO. R2-2003-0013

**MANDATORY MINIMUM PENALTY
IN THE MATTER OF
SIEMENS CORPORATION
10950 N. TANTAU AVE., CUPERTINO, SANTA CLARA COUNTY**

This Complaint assessing a Mandatory Minimum Penalty (MMP) pursuant to Water Code section 13385 (h) and (i) is issued to Siemens Corporation (hereafter Discharger) based on a finding of twelve violations of Order No. 99-051, as amended by Order No. R2-2002-0062, NPDES Permit No. CAG912003, general waste discharge requirements for discharge or reuse of extracted and treated groundwater resulting from the cleanup of groundwater polluted by volatile organic compounds (VOC General NPDES Permit).

The Executive Officer finds the following:

1. The Regional Water Quality Control Board, (Regional Board) adopted the VOC General NPDES Permit on July 21, 1999. The Discharger applied for and received a letter dated June 9, 2000, authorizing the discharge of treated groundwater under this VOC General NPDES Permit.
2. The VOC General NPDES Permit prohibits the discharge of effluent containing trichloroethene (TCE) with concentrations exceeding 5 micrograms per liter (ug/l) and prohibits the discharge of effluent with a pH below 6.5 or above 8.5.
3. According to the January 31, 2002, and April 30, 2002, reports and comments submitted by the Discharger, effluent samples collected from the treatment facility on the dates listed in the table below contained the regulated components at levels that violated their corresponding instantaneous limits.

Sample Number	Test Date	Regulated Component	Test Results ug/L or pH units	NPDES Limit ug/L or pH units	Exceeding Limit %, or pH units	MMP
1	July 3, 2001	pH	8.8	6.5 to 8.5	0.3	\$0**
2	July 9, 2001	pH	8.7	6.5 to 8.5	0.2	\$0**
3	July 20, 2001	pH	8.7	6.5 to 8.5	0.2	\$0**
4	July 26, 2001	pH	8.7	6.5 to 8.5	0.2	\$3,000
5	July 31, 2001	pH	8.7	6.5 to 8.5	0.2	\$3,000
6	August 21, 2001	pH	8.7	6.5 to 8.5	0.2	\$3,000
7	September 2001*	pH	8.6	6.5 to 8.5	0.1	\$3,000
8	October 2, 2001	TCE	5.8	5	16%	\$3,000
9	November 20, 2001	TCE	7.2	5	44%	\$3,000
10	February 19, 2002	TCE	110	5	2100%	\$3,000
11	February 27, 2002	TCE	36	5	620%	\$3,000
TCE = Trichloroethylene, pH is measured in units * Single day event, exact date was not provided in the report ** MMP not assessed for the first three violations in a six month period						Total: \$24,000

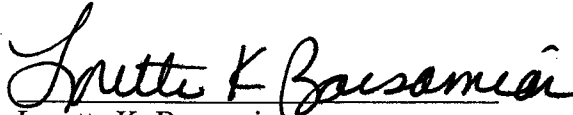
4. Water Code Section 13385(h)(1) requires the Regional Board to assess an MMP of \$3,000 for the following violations at this facility:
 - a) NPDES violations: These violations occur whenever the Discharger exceeds an effluent limitation four or more times in any period of six consecutive months, except that the requirement to assess the MMP shall not be applicable to the first three violations. Samples 1 – 8 are violations within this category.
 - b) Serious NPDES violations: A serious violation includes discharge of effluent containing any Group II pollutant in a concentration that exceeds the established maximum limits by 20 percent or more. TCE is considered a Group II pollutant. Samples 9, 10 and 11 are serious violations.
5. The Discharger committed eleven violations during the 8-month period beginning July 3, 2001, and ending on February 27, 2002. The total amount of the MMP for these violations is \$24,000.
6. This Amended Complaint accommodates comments received in response to the original Complaint issued in February 2003. Comments provided information that a violation dated August 2001 in the original Complaint did not actually occur and that a mistake in reporting had been made. This Amended Complaint deletes that violation.
7. Section 13385 allows the Discharger to spend a portion of the MMP on a supplemental environmental project (SEP) that may not exceed \$15,000 plus 50 percent of the MMP amount that exceeds \$15,000. In this case, the maximum SEP amount is \$19,500, calculated by $[\$15,000 + (0.5)(\$24,000 - \$15,000)]$.
8. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.

SIEMENS CORPORATION IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed an MMP in the amount of \$24,000.
2. The Regional Board will hold a hearing on this Complaint on March 19, 2003, unless the Discharger waives the right to a hearing by signing the last page of this Complaint and checking the appropriate box. By doing so, the Discharger agrees to:
 - a) Pay the full penalty of \$24,000 within 30 days after the signed waiver becomes effective, or
 - b) Pay a penalty of a minimum of \$4,500 within 30 days after the signed waiver becomes effective, and satisfactorily complete a SEP in an amount to a maximum of \$19,500. The

sum of the SEP amount and the amount of the fine to be paid to the State Board shall equal the full penalty amount of \$24,000.

3. If the Discharger chooses to propose an SEP, it must submit a proposal by March 14, 2003, for the Executive Officer's approval. Any SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002. If the proposed SEP is not acceptable to the Executive Officer, the Discharger has 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or make a payment for the suspended amount. All payment, including any money not expended for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.
4. The signed waiver becomes effective the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.
5. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed penalty, or whether to refer the matter to the Attorney General for recovery of the civil liability.


Loretta K. Barsamian
Executive Officer

March 6, 2003
Date

WAIVER

(The signed waiver becomes effective the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.)

☐ Waiver of the right to a hearing and agree to make payment in full.

By checking the box I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Amended Complaint No. R2-2003-0013 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o State Water Resources Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the signed waiver becomes effective as indicated above. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed.

☐ Waiver of the right to a hearing and agree to make payment and undertake a SEP.

By checking the box I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Amended Complaint No R2-2003-0013 and to complete a supplemental environmental project (SEP) in lieu of the suspended penalty in an amount not to exceed \$19,500. I also agree to remit the balance of the fine to the State Water Pollution Cleanup and Abatement Account within thirty days after the signed waiver becomes effective. The sum of the SEP amount and the amount of the fine to be paid shall equal the full penalty amount of \$24,000. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty within thirty days of a letter from the Executive Officer denying the approval of the proposed SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the mandatory minimum penalty (MMP) proposed. I further agree to complete the approved SEP within a time schedule set by the Executive Officer.

Name (print)

Date

Signature

Title/Organization